



Civil Resolution Tribunal

Date of Original Decision: May 29, 2024

Date of Amended Decision: June 26, 2024

File: SC-2023-001807

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Hancharuk v. WestJet Airlines Ltd.*, 2024 BCCRT 492

B E T W E E N :

DUSTIN HANCHARUK

APPLICANT

A N D :

WESTJET AIRLINES LTD.

RESPONDENT

AMENDED REASONS FOR DECISION

Tribunal Member:

Alison Wake

INTRODUCTION

1. This dispute is about compensation for a missed flight connection. Dustin Hancharuk purchased a return ticket from Kelowna, BC to Phoenix, AZ, connecting through Calgary, AB, from WestJet Airlines Ltd. (WestJet). Mr. Hancharuk's flight from Kelowna to Calgary was delayed, and he missed his connecting flight from Calgary

to Phoenix. Mr. Hancharuk says the delay is WestJet's responsibility. He claims \$4,307 in compensation and expenses for the missed connection.

2. WestJet agrees with some of Mr. Hancharuk's claims, but says that most of them should be dismissed because Mr. Hancharuk chose to book his own replacement flights instead of waiting for alternate travel arrangements.
3. Mr. Hancharuk is self-represented. WestJet is represented by an employee.ⁱ

JURISDICTION AND PROCEDURE

4. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). CRTA section 2 says that the CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Considering the CRT's mandate that includes proportionality and a speedy resolution of disputes, I decided to hear this dispute through written submissions.
6. CRTA section 42 says the CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in court. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
7. Where permitted by CRTA section 118, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the CRT considers appropriate.
8. In his submissions, Mr. Hancharuk referenced settlement discussions between himself and WestJet in the CRT's facilitation stage. WestJet says that it did not

consent to the disclosure of settlement discussions. CRT Rule 1.11 says that settlement discussions must not be disclosed to a tribunal member unless the parties agree. So, I have not considered Mr. Hancharuk's submissions about the parties' settlement discussions in this decision.

9. Mr. Hancharuk provided evidence about expenses incurred by his partner, AM. AM is not a party to this dispute. WestJet says that AM has filed her own CRT dispute, and that Mr. Hancharuk does not have standing to claim expenses on her behalf. I agree. As AM is not a party to this dispute, I have not considered her expenses in this decision as I find Mr. Hancharuk does not have standing to claim them.

ISSUES

10. The issues in this dispute are:

- a. Must WestJet reimburse Mr. Hancharuk for his hotel, meal, and flight expenses?
- b. Must WestJet pay Mr. Hancharuk compensation under the *Air Passenger Protection Regulations* (APPR) for the delay, and if so, how much?

EVIDENCE AND ANALYSIS

11. As the applicant in this civil proceeding, Mr. Hancharuk must prove his claims on a balance of probabilities, meaning more likely than not. While I have considered all the parties' evidence and submissions, I only refer to what is necessary to explain my decision.
12. Mr. Hancharuk booked a WestJet flight from Kelowna to Phoenix on December 21, 2022, with a connection through Calgary. His first flight, WS 460, was to depart Kelowna at 1:05 pm PST and arrive in Calgary at 3:06 pm MST. His second flight, WS 1536, was to depart Calgary at 6:50 pm MST and arrive in Phoenix at 10:52 pm MST.

13. WS 460 was delayed, so Mr. Hancharuk did not arrive in Calgary until 11:12 pm and missed his connection to Phoenix. Mr. Hancharuk then booked himself on a flight from Calgary to Phoenix via Seattle, operated by Delta Airlines. Mr. Hancharuk says that he successfully flew to Seattle, but he faced further delays and cancellations once there. He ultimately arrived in Phoenix on December 24, 2022 via Spirit Airlines.
14. Mr. Hancharuk claims compensation for the delay under the APPR, as well as reimbursement for his rebooked flights, hotel costs, and meal expenses.
15. The APPR applies to flights to, from, and within Canada, including connecting flights. So, I find the APPR applies to Mr. Hancharuk's flights. I also accept WestJet's argument that Mr. Hancharuk is bound by its International Tariff, a copy of which is in evidence. I find the tariff essentially mirrors the APPR provisions regarding flight delays.
16. The APPR provides different obligations for "small carrier" and "large carrier" airlines. There is no dispute that WestJet is a "large carrier" as defined in the APPR. The obligations and available compensation also depend on whether the delay was within or outside the carrier's control.

Was the delay within WestJet's control?

17. It is unclear whether WestJet argues that the delay was within or outside its control. In its Dispute Response, WestJet said that if Mr. Hancharuk suffered any loss, it was caused by situations outside of WestJet's control or within WestJet's control, but required for safety purposes. In a January 20, 2023 email to Mr. Hancharuk in evidence, WestJet said that the most significant reason for his flight delay was "flight crew member delays from a connecting flight", which it said was outside its control. WestJet's submissions do not directly address whether the delay was within its control, but it relies on APPR sections 17 and 19, which apply to delays within a carrier's control. I infer that WestJet concedes that the delay was within its control. If this is inaccurate, I would have found that the delay was within WestJet's control in any event, for the following reasons.

18. WestJet provided an Irregular Operations Report showing a timeline of events and the reason for WS 460's delays. Of the 486 minutes of delay, the report says that 277 minutes was attributable to "Connecting Crew Uncontrollable". The other listed reasons are "Weather" (30 minutes), "Guest Handling" (10 minutes), "Ground Handling Impaired By Unscheduled Aircraft On Ground" (90 minutes), "Crew Procedures" (7 minutes), and "Airport Facilities" (13 minutes). There is a further delay of 59 minutes categorized as "NAS". This term is not defined and WestJet does not explain it further.
19. So, what was the reason for the delay? The APPR's parent legislation, the *Canada Transportation Act*, establishes the Canadian Transportation Agency (CTA), which resolves disputes between passengers and airlines about the APPR's application. In decision 122-C-A-2021, the CTA determined that when multiple disruptions affect a traveler's itinerary, the primary reason for the delay is the most significant contributing factor to the overall delay.
20. Here, based on WestJet's report, I find the connecting crew delay was the most significant contributing factor to the delay. This is also consistent with WestJet's January 20 email to Mr. Hancharuk.
21. APPR section 10(2) says that a delay that is directly attributable to an earlier delay that is outside the carrier's control is considered to also be due to outside a carrier's control if the carrier took all reasonable measures to mitigate the impact of the earlier delay. However, in decision 89-C-A-2002, the CTA found that to establish that a crew shortage was not within its control, the carrier must demonstrate that it could not have reasonably prevented the disruption despite proper planning.
22. While CTA decisions are not binding on me, I agree with this reasoning and apply it here. WestJet provided no evidence about why the connecting crew was delayed, or about whether it could have reasonably prevented the disruption. So, I find the delay was within WestJet's control.

Rebooked flights

23. Under APPR section 17(1), for delays of more than 3 hours within a large carrier's control, the carrier is obligated to rebook the passenger on the next available flight to their destination on a reasonable route departing within 9 hours with the original carrier or with another carrier with which it has a commercial agreement. If the carrier is unable to do so, it must rebook the passenger on any reasonable air route to their destination within 48 hours.
24. Under APPR section 17(2), if the offered alternate travel arrangements do not accommodate the passenger's travel needs, the carrier must refund the unused portion of the ticket.
25. Here, Mr. Hancharuk says that WestJet did not offer him alternate travel arrangements for him under the APPR. He says that he waited in line at the WestJet desk for over an hour, until the WestJet employee at the desk said that they would not be able to help anyone else that day. He also says that he called WestJet repeatedly but was unable to speak with anyone. WestJet does not dispute this.
26. Mr. Hancharuk says that WestJet did not communicate with him at all about alternate travel arrangements. While WestJet says that it was in the process of rebooking Mr. Hancharuk when he chose to book his own flights, Mr. Hancharuk says that he did not receive any communication from WestJet about rebooking. He says that WestJet had no way of knowing that he had booked alternate arrangements himself, but he still did not hear from WestJet even days later about a rebooked flight. So, he disputes WestJet's submission that it was in the process of rebooking him.
27. Because Mr. Hancharuk raised this argument in final reply submissions, I gave WestJet an opportunity to provide additional submissions about what efforts it made, if any, to make alternate travel arrangements for Mr. Hancharuk. WestJet responded that it has been unable to determine whether and when it made alternate travel arrangements for Mr. Hancharuk.

28. Based on WestJet's response, I agree with Mr. Hancharuk that WestJet did not make alternate travel arrangements for him in accordance with APPR section 17(1). WestJet argues that it is not required to compensate Mr. Hancharuk for his self-booked alternate arrangements. It relies on previous CRT and CTA decisions which have found that the APPR does not require airlines to reimburse passengers for their own self-booked alternate travel arrangements.¹ However, in each of these decisions, WestJet had offered the passenger alternate travel arrangements, which the passenger rejected in favour of their own self-booked arrangements. I find the circumstances in this dispute are distinguishable, as there is no evidence that WestJet offered Mr. Hancharuk alternate flight arrangements at all.
29. However, I find Mr. Hancharuk has not proven that he incurred any damages as a result of WestJet's failure to offer him alternate arrangements. Mr. Hancharuk paid \$1,209.01 to book a flight on Delta from Calgary to Phoenix, through Seattle. WestJet argues that even if it is responsible for the cost of rebooking Mr. Hancharuk on a different airline, Mr. Hancharuk's damages should be limited to the cost of the Delta flight.
30. I agree with WestJet on this point. While Mr. Hancharuk's evidence is that he ultimately had to book additional flights in order to get to Phoenix, due to subsequent delays and cancellations, I find these delays and cancellations were the responsibility of Delta and the other carriers that Mr. Hancharuk booked other flights on. In other words, I find that WestJet's responsibility is limited to compensating Mr. Hancharuk for the Delta flights, as those flights would have complied with its obligations under the APPR. WestJet is not responsible for additional delays or cancellations that occurred on other carriers.
31. In a February 2, 2023 email to WestJet, Mr. Hancharuk said that he had received compensation from Delta for the delays he experienced. WestJet argues that to prevent double recovery, Mr. Hancharuk should not be entitled to reimbursement of

¹ See, for example, *Tubajon-Sharma v. WestJet Airlines Ltd.*, 2023 BCCRT 966, and CTA decision 142-C-A-2022 (*Mah*).

the Delta flights unless he provides evidence that he has not already received a refund from Delta. I invited Mr. Hancharuk to provide submissions about the amount of the compensation he had received from Delta, and he confirmed that he had received a full refund of the \$1,209.01 he paid for the Delta flights. So, I find Mr. Hancharuk has not proven that he is entitled to any additional reimbursement for the Delta flights, and I dismiss this portion of his claim.

APPR compensation for delay

32. Mr. Hancharuk claims \$1,000 as compensation for his delayed flight under APPR section 19(1). This section requires a large carrier to compensate a passenger \$1,000 if the arrival of their flight at the original destination is delayed by 9 hours or more.
33. WestJet does not dispute that Mr. Hancharuk is entitled to compensation for the delay, but says that he is only entitled to \$400 for inconvenience under APPR section 19(2), because he chose not to continue on the original ticket. APPR section 19(2) limits the delay compensation to \$400 in the event the passenger's ticket is refunded under section 17(2).
34. APPR section 17(2) requires a carrier to refund the unused portion of the passenger's ticket where the alternate travel arrangements offered by the carrier do not accommodate the passenger's travel needs. However, as discussed above, here I find that WestJet did not offer alternate travel arrangements to Mr. Hancharuk. So, while I accept that WestJet refunded the unused portion of Mr. Hancharuk's ticket as discussed below, I find that it did not do so in accordance with APPR section 17(2).
35. Even if WestJet had offered alternate travel arrangements to Mr. Hancharuk, and Mr. Hancharuk had accepted them, I find that Mr. Hancharuk's arrival in Phoenix would have been delayed by over 9 hours in any event. I say this because WS 460 was delayed by approximately 8 hours and the flying time from Calgary to Phoenix is approximately 4 hours, based on the flight time for WS 1536. So, I find Mr. Hancharuk is entitled to \$1,000 in compensation for the delay under APPR section 19(1).

36. Mr. Hancharuk is entitled to pre-judgment interest under the *Court Order Interest Act* on this amount from January 20, 2023, the date that WestJet denied his APPR compensation claim, to the date of this decision. This equals \$66.07.

Unused flights

37. Mr. Hancharuk claims \$654 for “unused flights”. It is not clear how he arrived at this amount. WestJet says that the unused portion of Mr. Hancharuk’s flights is \$254.29, and that it has already refunded this amount to the original payment method, as required by APPR section 18.2. This is supported by internal WestJet emails in evidence, confirming that the refund has been processed.
38. Mr. Hancharuk says that he has not received this refund. Mr. Hancharuk’s e-ticket in evidence shows he used points to book the original flights through CIBC Rewards. WestJet says that if Mr. Hancharuk has not received his refund, he must follow up with his travel agency.
39. I agree with WestJet that it has complied with APPR section 18.2 by refunding the unused portion of Mr. Hancharuk’s flights to the original purchase method. So, I dismiss this part of Mr. Hancharuk’s claim.

Hotel, meal, and transportation expenses

40. Mr. Hancharuk claims \$719 in hotel expenses. APPR section 14(2) requires a carrier to offer reasonable hotel accommodation and transportation to and from the hotel, free of charge, if the passenger is required to wait overnight due to a flight delay. APPR section 14(1) also requires the carrier to provide food and drink in reasonable quantities.
41. WestJet acknowledges that Mr. Hancharuk had to wait overnight in Calgary on December 21 because of the delay. It agrees to pay Mr. Hancharuk \$234.94 for his hotel expenses that night, \$15.75 for transportation to and from the hotel, and \$26.03 for meal expenses.

42. However, WestJet disputes that it is responsible for Mr. Hancharuk's claimed hotel, meal, and transportation expenses in Seattle, which he incurred after rebooking on Delta. I agree. I find the expenses Mr. Hancharuk incurred after flying to Seattle were because of delays and cancellations on other carriers, and are not WestJet's responsibility.
43. So, I order WestJet to pay Mr. Hancharuk \$276.72 for his hotel, meal, and transportation expenses in Calgary. Mr. Hancharuk is entitled to pre-judgment interest under the *Court Order Interest Act* on this amount from December 22, 2022, the date he incurred these expenses, to the date of this decision. This equals \$19.05.
44. I dismiss Mr. Hancharuk's remaining meal, hotel, and transportation claims.

CRT FEES AND EXPENSES

45. Under CRTA section 49 and the CRT Rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Neither party paid CRT fees or claimed dispute-related expenses, so I make no order for them.

ORDERS

46. Within 21 days of this decision, I order WestJet to pay Mr. Hancharuk a total of \$1,361.84, broken down as follows:
- a. \$1,276.72 in compensation for inconvenience and expenses under the APPR, and
 - b. \$85.12 in pre-judgment interest under the *Court Order Interest Act*.
47. Mr. Hancharuk is entitled to post-judgment interest, as applicable.
48. This is a validated decision and order. Under CRTA section 58.1, a validated copy of the CRT's order can be enforced through the Provincial Court of British Columbia.

Once filed, a CRT order has the same force and effect as an order of the Provincial Court of British Columbia.

Alison Wake, Tribunal Member

ⁱ Paragraph 3 has been amended under section 64(b) of the CRTA to correct an inadvertent error.